



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
Headquarters, F-5/1, Islamabad
Tel # 051-9225341, Fax # 051-2878113

No.PTA/Law and Regulation/Law/2185/2023/604


2nd August, 2023

Subject: Decision of the Pakistan Telecommunication Authority in Appeal Filed by Pakistan Telecom Mobile Limited (PTML).

Please refer to your appeal dated 13th March, 2023 and hearing on 15th May, 2023.

2. Find attached the decision of the Authority passed in the captioned matter for information, record and compliance, please.

Encl: As above.


(Muhammad Khurram Siddiqui)
Director General (Law and Regulations)

1. **Pakistan Telecom Mobile Limited (PTML)**
through its Chief Executive Officer,
55-C, Ufone Tower, 15th Floor, Jinnah Avenue,
Islamabad.
2. **Mr. Abdul Jabbar**
Automotive MFG (Pvt.) Limited
203-206-Prince Center, Preedy Street, Saddar,
Karachi.

Copy for information to:

1. DG (CPD), PTA HQs
2. DG (CA), PTA HQs
3. DG (Licensing), PTA HQs
4. DG (Coordination), PTA HQs
5. Director to Chairman, PTA HQs
6. SO to Member (Compliance & Enforcement), PTA HQs
7. PA to Member (Finance), PTA HQs



Government of Pakistan
PAKISTAN TELECOMMUNICATION AUTHORITY
HEADQUARTERS, F-5/1, ISLAMABAD

**Decision under section 7 (2) of the Pakistan Telecommunication
(Re-organization) Act, 1996 in appeal filed by Pak Telecom Mobile Limited**

No. PTA/Law and Regulation/Law/2185/2023/604

Appeal No. 1/2023:	13 th March, 2023
Venue of Hearing:	PTA HQs, Islamabad
Date of Hearing:	15 th May, 2023

The Issue:

“Appeal against order dated 8th February, 2023 on complaint filed by Mr. Abdul Jabbar regarding imposition of charges on account of International Roaming”

1. This order will dispose of Appeal No. 1/2023 dated 13th March, 2023 filed by Pakistan Telecom Mobile Limited (PTML) (the “**Appellant**”). The Appellant being aggrieved from the order dated 8th February, 2023 (the “**Impugned Order**”) issued by Director CPD - PTA relating to imposition of International Roaming (IR) charges against mobile No. 0300-8236782 filed the instant appeal under section 7(2) of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “**Act**”) before Pakistan Telecommunication Authority (the “**Authority**”).

2. The brief facts for disposal of the instant appeal are that Mr. Abdul Jabar (the “**Respondent No.2**”) filed a complaint against charging of excessive billing Rs.556303.86/- against his postpaid mobile No. 0300-8236782 on account IR during his visit to Qatar /Switzerland in December, 2022 despite the fact that the credit limit against the said mobile number was Rs.15000/-. As per Impugned Order the matter was heard and the complaint was decided on 8th February, 2023. For ready reference, the operative part is reproduced as under:

*“**Decision 1:** Ufone will waive off the excessive amount beyond the complainant’s assigned credit limit and provide corrected bill to him for the respective month.*

***Decision 2:** Ufone will share the comprehensive procedure as directed through “Decision of the Authority passed in Appeal filed by Creative Electronic (Pvt.) Limited “dated 16th November, 2017”*

3. The Appellant being aggrieved from the Impugned Order filed the instant appeal before the Authority under section 7(2) of the Act. The main grounds are as under:

3.1 The Authority has no lawful authority to decide the Complaint filed under Consumer Protection Regulations and any order in relation to a complaint which can be filed under Consumer Protection Regulations, can be passed by the Authority only.

- 3.2 The Consumer Protection Regulations are not applicable to IR services and no complaint under Consumer Protection Regulations can be filed, entertained or decided by the Authority or the Respondent No. 1.
- 3.3 That activation of IR only means that if customers of the Appellant chose and opt to avail services of any foreign operators in any foreign country, then such customers may avail and opt the same on the terms and conditions as may be offered by such foreign operator and accordingly activation of IR on the Mobile Number of the Respondent No. 2 does not automatically means that upon arriving in the foreign country, the Respondent No. 2 was able to use mobile telecommunication services of such foreign operator, instead upon arriving in foreign country, when a mobile handset carrying SIM having the Mobile Number is switched on, the customers get option to select any operator with whom the Appellant has IR agreement and upon selection of one of such operators, subscribe to such services of that foreign operator and then an SMS is sent by such foreign operator providing related terms and conditions, then such customer and in this case Respondent No. 2 is and was able to avail mobile telecommunication services of such foreign operator, therefore it was the Respondent No. 2. who himself availed mobile telecommunication services of such foreign operators against such charges applied and communicated by such foreign operator to the Respondent No. 2 as well.
- 3.4 That Appellant under IR Agreement is only responsible and undertake, on the basis of request and undertaking of its customers, to collect charges imposed by such foreign operators for providing its own mobile telecommunication services in such foreign country on the basis of monthly invoice sent by such foreign operator.
- 3.5 That as per IR Activation Form duly signed by the Respondent No. 2, the Respondent No. 2 is fully responsible for IR charges notwithstanding credit limit initially assigned to him in 2013, while his IR is permanently activated as per his request.
- 3.6 That as admitted in the Complaint, the Appellant is using IR since 2013 and is well aware of the terms and conditions, process and procedure applicable and involved for availing IR and its charges and accordingly from 7 to 8.12.2022 the Respondent No. 2 on arriving in Qatar and Switzerland himself opted to obtain and subscribed mobile telecommunication services of Qtel and Salt respectively foreign operators in accordance with the terms and conditions of such foreign operators, which to the extent of rates of IR charges are also available on the website of the Appellant at <https://www.ufone.com/postpay-roaming-services/> and the Respondent No. 2 is well aware of the same and also referred to in the CSAF. Further Appellant also agreed to pay all charges for IR services irrespective of the credit limit initially assigned to him.
- 3.7 Without prejudice to the above, it is humbly submitted that in accordance with IR Agreement, the Appellant does not and in accordance with the License and applicable law, cannot have live access to the telecommunication system of the foreign operator, unless and to the extent any information and access is provided by such foreign operator for the purposes of collection and authentication of

- telecommunication services provided by such foreign operator, therefore cannot have control on monitoring billing amounts of its customers in foreign countries.
- 3.8 That Impugned order is also passed on the basis that the Appellant should have discontinued IR services to the Respondent No. 2 after he had utilized IR Services up to the credit limit of his security deposit of Rs. 15,000, which approach is flawed, because (i) there were no such instructions and terms and conditions of the CSAF requiring the Appellant to terminate IR Services, (ii) real time billing for IR Services and related charges is generated and maintained by foreign operators, therefore Appellant was not able to monitor IR charges on its system in Pakistan on real time basis, (iii) the security deposit is only for the purposes of Licensed Services which is monitored by the Appellant in order to secure its interest, however requirement of such security deposit and restricting usage of mobile communication services after the lapse of security deposit is not a legal requirement, and further (iv) usage of mobile communication services by the Respondent No. 2 beyond the security deposit does not disentitle the Appellant from recovering charges for such services. On the contrary under the Consumer Protection Regulations, the Appellant can have security only up to three months average usage of Licensed Services by the customers and not more than that.
- 3.9 That while IR facility is activated against any number, the data usage intimation is sent by the Appellant to the user after every 4 hours interval with details of utilization of data services, which intimation SMSs were sent to the Respondent No. 2 and billing is generated after billing cycle of 30 days on receipt of usages details from roaming partner as per applicable tariff. The usage is not restricted in real time against security deposit. The text and details of SMSs sent by the Appellant to the Respondent No. 2 are given below:

Alert Time	MSISDN	MBs	Usage Time
12/8/2022 0:00	923008236782	1	12/7/2022 19:18
12/7/2022 20:00	923008236782	6	12/7/2022 16:27
12/7/2022 08:00	923008236782	61	12/7/2022 6:31
12/7/2022 12:00	923008236782	62	12/7/2022 6:51

Dear Customer, You have
consumed 3 MB data during last 4 hrs
(till 01:00 PM PKT). Data
roaming will be billed as per
charging interval and tariff of
relevant roaming operator. For
further info, please visit
www.ufone.com or call +92-51-111333100

Therefore, the Appellant has fully discharged its legal and contractual liabilities and had disclosed and intimated all related terms and condition governing IR; therefore, the Respondent No. 2 is liable for IR charges of the foreign operator and the Appellant has no authority to waive such foreign operator's claims arising out of use by the Respondent No. 2 of telecommunication service of foreign operators.

- 3.10 As such, PTA failed in its obligation to act in an open, equitable and transparent manner, as provided under Section 6(b) of the Act and protect rights of the Appellant.
- 3.11 That under section 8(2)(a) of the Act, Federal Government is authorized to provide "term and conditions of the License", which is binding on the Authority and can only be modified by mutual consent with the Appellant under section 22 of the Act and accordingly under section 4(1)(a) of the Act function of the Authority is to regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan and to perform such functions and exercise such powers under section 5(2)(b) of the Act the Authority has power to "Monitor and Enforce License" and for that purpose under section 5(2)(o) of the Act to issue regulations and under section 6(a) of the Act it is provided that the Authority shall ensure that rights of the Appellant are duly protected in accordance with the Act, Rules, and the License, however the Impugned Order is issued in violation thereof and the Respondent No. 1 has failed to act in accordance with the License and or to protect rights of the Appellant in violation of the Act, the Rules and the License, hence the Impugned Order is liable to be set aside and withdrawn on this sole ground alone.
- 3.12 That Impugned Order is issued purportedly under section 23 of the Act, It is respectfully submitted that a notice under section 23 of the Act may be issued only if the Appellant fails to comply with (i) any provision of the Act, or (ii) any provision of the Rules, or (iii) any term or condition of the License but on the contrary Impugned Order is issued without lawful authority.
- 3.13 The Impugned Order results in regulating the telecommunication services of foreign operators outside Pakistan is beyond functions of the Authority however any policy or rules in this regard may be issued by the Federal Government under section 8 read with section 57 of the Act.
- 3.14 That telecommunication services received by the Respondent No. 2 from a foreign operators are not subject matter of the Licenses and does nor form part of the Licensed Services, therefore the Respondent No. 1 has no authority to adjudicate or pass the Impugned Order.
- 3.15 That the Appellant also informed the Authority that the IR services were availed in Qatar/ Switzerland as mentioned in CDR provided by roaming partner. The Appellant also informed that while IR facility is activated against any number, the data usage intimation is sent to the user after every 4 hours interval with details of utilization of data services and billing is generated after billing cycle of 30 days on receipt of usages details from roaming partner as per applied tariff. The usage is not restricted in real time against security deposit which is assigned at the time of activation of IR facility.
4. In order to proceed further in the instant matter, the appeal was fixed for hearing on 15th May, 2023. Mr. Mohammad Irshad Advocate Supreme Court of Pakistan (Legal Counsel), Mr. Amir Shafiq (VP), Mr. Irtazaa (Group Director) appeared on the behalf of the appellant and Mr. Hafiz Munawar Advocate Supreme Court of Pakistan appeared on behalf

of the Respondent No.2. Legal counsel appeared on behalf of the Appellant reiterated the same stance as contended in the Appeal.

5. Pursuant to the hearing, the Appellant was required to submit written arguments. The licensee filed written submission vide letter dated 22nd May, 2023. The crux of relevant submissions is given below:

- 5.1 That titled Appeal was heard by two members of the Authority on 15.05.2023. That after briefly hearing the titled Appeal Hon'ble members were pleased to proposed that Appellant and the Respondent No. 2 negotiate to amicably settle the subject matter of the dispute, and directed the Appellant to file written arguments and if the dispute is not settled by mutual negotiation within seven (7) days, then the Appeal may be decided on merits after considering the submissions made during the hearing, in the memorandum of Appeal and written arguments submitted by the Appellant.
- 5.2 That written arguments on behalf of the Appellant are hereby submitted, which may kindly be read and considered in addition to and in juxtaposition with and reference to oral submission made by the Appellant during hearing on 15.05.2023 and submissions made in the Memorandum of Appeal and documents attached therewith.
- 5.3 The Appellant in relation to mobile connection no. 0300 823 6782 in the name of the Respondent No. 2 issued a bill for the month of November 2022 in the amount of Rs. 557,770.89 (the, "**Bill Amount**"), which included charges for IR Call: Rs. 2,676.04 + IR Data: Rs. 461,727.88] (the, "**Foreign Operator Service Charges**") incurred on account of International Roaming Services ("**IR**") availed by the Respondent No. 2 **outside Pakistan** from Qtel in Qatar and Orange Communication in Switzerland (the, "**Foreign Operators**") during his travel on 07 to 08.12.2022. That upon non-payment, his connection of the Mobile Number was terminated on 08.12.2022. The Respondent No. 2 filed Complaint before the Authority under the Telecom Consumer Protection Regulations, 2009 (the, "**TCP Regulations**") alleging that he is not liable to pay Bill Amount in excess of his credit limit/security deposit of Rs. 15,000 (the, "**Security Deposit**") because his services should have been disconnected by the Appellant upon the service charges reaching Security Deposit and that his connection should be restored without payment of Bill Amount in excess of the Security Deposit.
- 5.4 That vide Impugned Order 10.02.2023 passed by the Authority under Reg. 15 of the TCP Regulations, without providing any reasons, the Appellant is directed to (i) waive off Bill Amount beyond Security Deposit against the Mobile Number (the, "**First Decision**") and (ii) Provide comprehensive procedure as directed through decision of the Authority dated 10th November, 2017 passed in an appeal filed by Creative Electronics (Private) Limited, which was relied upon and attached with the Impugned Order (the, "**Second Decision**").
- 5.5 That the Impugned Order is non-speaking, giving no reasons, issued without lawful authority, is unwarranted, devoid of merits, not sustainable, *void ab initio*, nullity in the eye of law, against the provision of the Act, the Rules and regulations issued thereunder and the License, therefore Impugned Order is liable

to be set aside *inter alia* on each of the following ground, which are raised without prejudice to each other.

- 5.6 Section 4 of the Act provides that the Authority shall (1) under sub-section 4(1)(a) of the Act, regulate, the establishment, operation and maintenance of telecommunication system and provision of telecommunication services in Pakistan, (2) under sub-section 4(1)(c) of the Act, promote and protect the interests of users of telecommunication services in Pakistan, (3) under sub-section 4(1)(d) of the Act, promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan, (4) under sub-section 4(1)(f), investigate and adjudicate on complaints and other claims made against the licensees arising out of alleged contravention of the provisions of the Act, the rules made and licenses issued thereunder. Therefore, IR is neither provided by the Appellant nor provided under the license issued by the Authority, instead the Respondent No. 2 availed telecommunication services of the Foreign Operators against the Foreign Operator Charges beyond the territorial and legislative powers of the Authority or the Respondent No. 1, which arrangement is governed under the International Roaming Services Agreement on the format provided by GSM Association Permanent Reference Document and the Appellant is only collecting agent of such Foreign Operators for recovery of Foreign Operator Charges, hence the Impugned Order passed under the Act and the TCP Regulations is issued without lawful authority and is liable to be set aside.
- 5.7 The Impugned Order is passed under Reg. 15 of the TCP Regulations, which is not applicable to IR availed by the Respondent No. 2 outside Pakistan from the Foreign Operators as explained below:
- 5.8 Without prejudice, it is submitted that IR is governed by GSM Association Permanent Reference Document approved by GSM Association and accordingly Qtel IRA and Orange IRA (governed under Swiss law and Arbitration is governed under ICC Rules) attached with Memorandum of Appeal as Annex-F and G. its clause 8 read with Annex-C.3.1 and Annex-C.3.2 respectively executed on such standard forms, and their rates and terms and conditions for relevant services are also available on website of the Appellant at <https://www.ufone.com/selfcare/app/tariff/postpay-roaming-tariff.php> which provides that Electronic Data Interchange (IR usage detail) between the roaming partner operators shall be on 24 hour basis and billing cycle is on 30 days basis, and data usage limit alerts were also sent to the Respondent No. 2 after every 4 hours therefore the Appellant due to technical limitations cannot have live or real time information about use of IR usage by the Respondent No. 2, therefore passing the Impugned Order on the grounds that Appellant should have enforced credit limit beyond Security Deposit on real time basis is flawed and not enforceable.
- 5.9 Standard Terms and Conditions of IR Activation Request Form of the Appellant, *inter alia* provides that:
- The customer takes full responsibility in the applicable billing against International Roaming charges irrespective of assigned limit.

- PTML will not be liable to waive off charges for any accidental/un-intentional Data usage while roaming outside Pakistan which might have occurred without the knowledge of customer.
- PTML will not be liable for Postpaid customer exceeding their respective Credit Limits in case of delay in receiving Roaming usage/billing information from Roaming partner/Roaming network.
- PTML shall always presume that the subscriber is up to date with all terms/conditions/Tariff/Charges for International Roaming as they are readily available on PTML's website or can be enquired about by dialing PTML's helpline.

5.10 That Terms and Condition for IR also includes terms and conditions of Customer Services Agreement Form dated 11.02.2013 (activated on 21.03.2013) (the, "CSAF") executed by the Respondent No. 2, approved by Pakistan Telecommunication Authority (the, "Authority" or "PTA") whereby the Respondent No. 2 (i) under the heading of "Customer's Acknowledgment and undertaking" also unconditionally agreed that all terms and conditions available on the Appellant's website shall be applicable and binding from the moment his thumb impression is verified from NADRA and his connection is activated, (ii) under the heading of the, "Charges" all charges shall be applicable as are available on the Appellant's website as mentioned above determined exclusively by the Appellant on the basis of calls, billing details recorded by the Appellant, (iii) under the heading of "Default" the Appellant shall be entitled to disconnect the services on non-payment of charges, (iv) under the heading of "Miscellaneous", all information contained in promotional material..... including terms and conditions available on the Appellant's website, as mentioned above, shall apply and binding.

5.11 That the Bill Amount is charged strictly in accordance with the applicable rates, terms and conditions agreed between the Respondent No. 2 strictly in accordance with law as mentioned herein and IR rates of Foreign Operators is also available on the website of the Appellant, therefore, the Authority under' section 6 (a) is duty bound to protect rights of the Appellant to recover the Bill Amount and cannot direct the Appellant to waive off the same.

5.12 That under the T&C of IR and CSAF and applicable law the Appellant is authorized to initially determine initial credit limit and disconnect the services upon exceeding such credit limit, however it is not obligation of the Appellant and notwithstanding the credit limit or security deposit, the Respondent No. 2 is obliged to pay for services he availed and the Appellant is entitled to recover the Bill Amount [Ref. heading "Charges" and "Default" of the CSAF and IR Activation Form].The Appellant No. 2 never instructed the Appellant to disconnect his Mobile Number connection in case charges exceed the Security Deposit.

5.13 That the Respondent No. 2 used and availed IR in one day in the amount of Foreign Operator charges on 7 December 2022 substantially between the time ,06:31:12 to 08:49:12 and partially in the smaller amount between 16:27:26 to

19:18:33 before Appellant could know about the usage limit because as per clause 8 read with Annex-C.3.1 and Annex-C.3.2 of Qtel IRA and Orange IRA, Interchange of TAP record (IR usage data) on Electronic Data Interchange (EDI) is on 24 hour basis, therefore the Appellant did not exactly knew IR Usage on real time basis and may in its own interest have disconnected the service if the Appellant knew, however SMS on every four (4) basis were sent to the Respondent No. 2 to put him on alert about high charges of IR as fully explained in memorandum of Appeal.

- 5.14 That telecommunication services received by the Respondent No. 2 from a foreign operator are not subject matter of the Licenses and nor does form part of the Licensed Services, therefore the Respondent No. 1 has no authority to adjudicate or pass the Impugned Order.
- 5.15 That clause 2.9 of the License issued by the Authority provides that the Licensee shall use its best efforts to enter into the necessary agreements with foreign operators in order to enable and provide international roaming to its subscribers. The Licensee must follow the Authority's guidelines on international roaming which may be issued from time to time, and as the Authority has not issued any guidelines there Qtel IRA and Orange IRA entered into by the Appellant on best efforts basis is the only governing document and required to be complied with for arbitration under CSAF by the Authority for any dispute between the Appellant and the Respondent No. 2 relating to IR.
- 5.16 Reliance on order dated 1011.2017 passed by the Authority in Appeal No. C.E.Co./2016- 810 filed by Mian Sultan Mehmood, CEO Creative Electronics (Private) Limited ("**Mian Sultan Mehmood Case**") is misplaced because such order was passed on the grounds that:
- i. Mian Sultan was employee of a corporate customer i.e. Creative Electronics and letter of intent where the Creative Electronics assumed full responsibility of charges, was held not related to IR, whereas in the instant case the Respondent No. 2 has assumed such liability, in his personal capacity, of all IR charges as per T&C of IR mentioned above;
 - ii. the Creative Electronics in subsequent email communication, restricted its liability to the extent of Rs. 30,000, whereas in the instant case, the Respondent No. 2 has not restricted his liability to the extent of Security Deposit.
 - iii. that PTML did not publish Tariff for IR. whereas in the instant case the Respondent No. 2 has not even alleged that applicable IR Tariff is not published or is not available on the website of the Appellant, while on the other hand applicable IR Tariff is available on the website of the Appellant as mentioned above;
 - iv. IR activation procedure is not in place, whereas in the instant case comprehensive IR activation procedure is in place and is also available on the website of the Appellant along with applicable T&C of IR and rates.

5.17 The Second Decision of the Impugned Order is also baseless as the Appellant vide its comments on “Draft of Tariff for Telecommunication Services Regulations, 2022” and “Draft International Mobile Roaming Services Guidelines, 2021” submitted and fully explained IR activation procedure and T&C of IR and its limitation on the real time availability of IR usage data as per IR agreements as also explained above and in the Memorandum of Appeal.

5.18 Without prejudice, it is humbly submitted that even otherwise 110 violation of any provision of the Act rules or regulations or the License or T&C of IR or T&C of the CSAF issued thereunder is alleged or identified in the Impugned Order, therefore the Impugned Order is liable to be set aside SCN.

6. Findings of the Authority:

6.1 Matter heard and record perused. After careful examination of record, followings are the findings of the Authority:

6.1.1 By virtue of provision(s) of the Act, the Authority is mandated to regulate the establishment, maintenance and operation of telecommunication system and provision of telecommunication services in Pakistan. Under section 4 (1)(m) of the Act, the Authority is also mandated to protect consumer rights. In addition in accordance with section 6 (f) of the Act the Authority is also responsible to ensure that the interest of users of telecommunication services are duly safeguarded. More so, as per section 21 (4) (l) of the Act the Appellant is also under an obligation to protect the consumer interest. For the purpose to promote and protect the rights and interest of consumers of telecommunication services in Pakistan, the Authority in exercise of its powers under section 5(2)(o) of the Act promulgated Telecom Consumer Protection Regulations, 2009 (the “**CP Regulations**”). The CP Regulations provide a comprehensive procedures for entertaining consumer(s) complaints.

6.1.2 In accordance with regulation 11 of the CP Regulations, all operators are mandated to entertain complaints of consumers in relation to any Services, including but not limited to the followings:

- i. Misuse of Service
- ii. Quality of Service
- iii. Illegal Practice
- iv. Poor Service
- v. Provision of Service
- vi. Misleading Statement
- vii. Non-Provision of Service
- viii. Mobile Number Portability related complaints.

6.1.3 In case of non-resolution of complaints by operators, the consumer(s) in accordance with regulation 15 of the CP Regulations may file a complaint before the Authority (**Consumer Protection Directorate**). Thus, in accordance with applicable regulations, the complaint in the instant matter was entertained and decided by CPD. In accordance with the CP Regulations, the term “**Consumer**” means any natural person or juristic person who is an actual or potential user of publically available Telecommunication Services from an Operator and not the reseller of such Services. Whereas the term “**Service**” means telecommunication service as defined in the Act.

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Since, the Appellant is providing services to consumer with certain terms and condition and against some fee/ charges, therefore, charging of any excess billing against Services falls within the regulatory ambit of the Authority.

6.1.4 In the instant matter, it is an admitted position that as per bill number 11000023361252 of the Mobile Number 0300823682, credit limit is Rs.15000.00 and there is no dispute on credit limit. However, dispute only pertains to the charges i.e., Rs.557,770.89 levied by the Appellant on account of IR for the use of GPRS 128.5 MB which are in excess to the credit limit. The Appellant has also placed on record IR Activation Request Form but the same has not been signed by the complainant. Thus in such circumstance(s), any imposition of charges over and above the credit limit is not justifiable.

6.1.5 It is also relevant to point out that charges on account of IR vary from country to country and the Appellant is under an obligation to inform its consumers / subscriber(s) about the IR charges before allowing such facilities. In absence of such intimation or due notice as well as without any written consent or agreement with the subscriber(s) / consumers, an imposition of any charges or issuing of invoice in excess to credit limit on account of IR facility is not tenable. Similarly the issue of IR charges has already been decided by the Authority in Appeal No. C.E.Co./2016- 810 filed by Mian Sultan Mehmood, CEO Creative Electronics (Private) Limited ("Mian Sultan Mehmood Case") wherein the Appellant was required to lay down a comprehensive procedure / check and balance to track the extra usage as well as excessive credit limits specially IR service where IR charges are comparatively high and not affordable by the consumer. Since the same has not been made available therefore, the complainant / Respondent No.2 is only liable to pay charges within the credit limit as provided in the bill/invoice.

6.1.6 The examination of record reveals that at the time of deciding matter, CPD raised the following query regarding IR facility and the same was responded by the Appellant:

"vi. Is there any agreement between operator and the consumer at the time of activation of IR Facility?"

Terms and conditions mentioned in para 1 are provided to postpaid customers at the time of international Roaming activation. However, in this particular case, International Roaming facility against mobile number 03008236782 was activated on 20-4-2013 and due to retention limitation, IR Activation Form is not available."

6.1.7 The said query and response clearly shows that though IR facility was activated however, IR Activation Form which specifically provides customer acceptance is not available. Most importantly, as per IR Activation Form, Customer's acceptance is being sought in the following manner:

"I take full responsibility in the applicable billing against International Roaming charges irrespective of assigned limit.

Customer signature"

Mere activation of IR facility shall not lead to imposition of charges unless IR Activation Form is signed and accepted by the customer. In such circumstances, since the Appellant has not sought consent from the complainant for IR activation and charging of IR services therefore, demand of charges over and above the credit limit is not allowed and in case balance payable by the complaint goes beyond the credit limit, the Appellant could have discontinued service well before time.

6.1.8 On the other hand, it has also been examined that though the Appellant has not sought consent but it has sent messages for use of data while using IR facility. The messages sent to the complainant did not provide any charges. It only provides usage of data roaming which will be billed as per charging interval and tariff of the relevant roaming operators. In this regard it is to point out that as to avoid any financial loss either on the part of the Appellant or complainant, it is the responsibility of the Appellant to specify the charges on account of use of the data roaming so that the customer may make decision as either to continue or stop further usage of data on IR. For taking transactional decision, it is an obligation on the Appellant that all notices must be clear and transparent. The term “**Transactional Decision**” has also been defined in CP Regulations which means any decision taken by the Consumer, whether it is to act or to refrain from action, concerning;

- (a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of Service; and
- (b) whether, how and on what terms to exercise a contractual right in relation to a Service.

In addition, regulation 8(3) and (4) of the CP Regulations further provide circumstances of a commercial misleading actions. For ready reference relevant regulation is reproduced below:

“8 (3) A Commercial Practice is a misleading action if:

(i) it contains false information, and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average Consumer in relation to one or more of the matters listed below, and it causes or is likely to cause him to take Transaction Decision that he would not have taken otherwise:

- a. the existence or nature of the Service;
- b. the main characteristics of the Service, such as its availability, validity, benefits, risks, after sale consumer assistance, complaint handling, date and method of provision, delivery, fitness for purpose, usage, quantity, specification and results to be expected from its use;
- c. the extent of Operator’s commitments and motives of Commercial Practice;
- d. the tariff of the manner in which tariff is calculated and the existence of a specified tariff advantage.

(4) A Commercial Practice is a misleading omission if, in its factual context, taking account of all its features and circumstances and the limitation of the communication medium, it omits, hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information that average Consumer needs, according to the context, to take an informed

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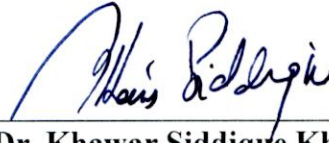
Transactional Decision and thereby causes or is likely to cause the average Consumer to take a Transactional Decision that he would not have taken otherwise.”

6.1.9 In this particular case, the messages sent to the consumer were not clear without any charges / tariff which could be made possible to the consumer to take a Transactional Decision either to continue to avail such services by paying charges or otherwise. Since messages were not clear with regard to amount to be charged against IR facility, thus complainant / Respondent No.2 cannot be held liable to pay charges over and above the credit limit i.e., Rs.15000/-.

6.1.10 What has been discussed, it is concluded that since Appellant has not implemented mechanism of IR activation and no material is available on record which substantiate that the consumer has accepted terms and condition of IR activation including payment of charges therefore, imposition / levying charges by the Appellant in excess to the credit limit is not justifiable. Respondent No.2 / complainant is liable to make payment in accordance with credit limit of Rs.15000/-only. Further, the Appellant is directed to restore services of consumer with immediate effect and submit a compliance report to Director CPD within three (03) days from the date of receipt of this order.



Muhammad Naveed
Member (Finance)



Dr. Khawar Siddique Khokhar
Member (Compliance & Enforcement)

Signed on 2nd day of August, 2023 and comprises of (12) pages only.